

**DISCIPLINARY HEARING
REPORT OF PROCEEDINGS**

NINO ANTHONY DE PARDO

On 24 May 2002 the Legal Practitioners Disciplinary Tribunal found that the practitioner was guilty of unprofessional conduct in that as a barrister in Family Court proceedings, he charged by way of counsel fees rendered to his instructing solicitor for payment by the client, sums which were in all the circumstances grossly excessive.

The fees the subject of these matters were rendered some 10 years earlier in 1993.

There have been delays in both dealing with the Reference and publishing the result caused in the main by the practitioner's unsuccessful appeal so far as the High Court to challenge the jurisdiction of the Tribunal, then an appeal to the Full Court of the Supreme Court against the Tribunal's decision.

In its decision of May 2002, the Tribunal fined the practitioner \$3,000 and ordered that details of the finding be published as this was not a minor matter as prescribed by Section 31D(5) of the Legal Practitioners Act 1893. However, it agreed that if the appeal was progressed in a timely manner, it would delay publication until after the result and depending upon the result of the last appeal, which was dismissed in October 2003.

In this case, the lay client entered into a costs agreement with his solicitors which agreement was prepared by Mr De Pardo whereby he undertook to pay for Mr De Pardo's services at a rate of \$1,500 per day or for an appreciable part of a day for any Court appearances plus \$180.00 per hour for conferences, phones and other additional matters.

The arrangement between the instructing solicitor and Mr De Pardo was that the latter would really do everything necessary for the purposes of conducting the case.

The first charge in issue was that Mr De Pardo submitted a bill for \$1,500 for a short directions hearing that lasted a few minutes. This hearing occurred in Bunbury. The client was not told that it could have been conducted by a junior solicitor. It lasted a few minutes only and certainly did not warrant a relatively senior barrister driving to Bunbury and back for that purpose. The client was not aware that he would be obliged to pay a fee such as that for a simple matter.

The second item was that Mr De Pardo charged a fee of \$10,000 said to be for 21, 22, 23 and 24 February 1993 for a pre-trial conference that was heard on 24 February 1993. No indication was given as to how Mr De Pardo arrived at this figure. The conference was on 24 February 1993 and the only issue then between the lay parties was a property settlement, and if one allowed \$1,500 for the hearing, that left \$8,500 to be explained and if it was to be at \$180.00 per hour, the previous three days would have meant more than forty hours in all. The practitioner stated that he prepared a detailed cross-examination and submissions for trial. He in fact had also charged \$900 on an earlier bill said to be for preparation of matters for trial and other fees which could be probably classed under the heading of 'getting up for trial'. This seemed wholly unnecessary. The purpose of attending this type of conference was aimed at avoiding a full hearing by trying to reach agreement. The practitioner claimed that the matter was complicated but the complication seemed to be mainly that the client did not want to pay a figure which the practitioner believed would be much less than that which might be ordered. In fact, a compromise reached was less than the client's proposed maximum.

The trial had been listed for four days which was to commence some 7 days after 24 February 1993. At that stage, a new issue relating to contact or access to children had arisen, but this was resolved by agreement after the trial Judge at the commencement suggested that the parties should do so and consent orders were made by His Honour later that day.

The practitioner charged \$1,500 for the first day and \$3,000 for 2 days which he said was in the nature of a reservation fee.

The Tribunal did not accept the practitioner's evidence that this had been agreed with the instructing solicitor either when the trial date was set or at the time that the property settlement was resolved. It formed no part of the costs agreement which had been prepared by Mr De Pardo and the Tribunal accepted that the lay client had not been aware that such a charge could be made.

The Tribunal found that each of the three charges taken separately amounted to a gross overcharge and either separately or together amounted to unprofessional conduct.

Mary-Anne Paton
Registrar
Legal Practitioners Disciplinary Tribunal
1 December 2003